

(vii) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(viii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The Date of transaction or delivery, and

(v) The quantity.

(c) When production of a covered commodity has been disposed of through non-commercial channels, such as used for feed, grazing, or silage, if Loan Deficiency Payments are not available, but crop insurance records or other FSA records indicate that the use of the crop was for silage, hay, or grazing, then county committee will assign production for that year based on the actual grain yield of three similar farms for the applicable year. If producers cannot meet any of these requirements or their crop suffered a low yield, then 75 percent of the county average yield as determined in accordance with §1412.302(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

**§1412.305 Incorrect or false production evidence.**

(a) If production evidence is false or incorrect, as determined by the county committee, the county committee shall determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the county committee shall:

(i) Require a refund of all direct and counter-cyclical payments earned for

the farm for the first year such payments were made;

(ii) Reduce the counter-cyclical payment yields for all crops on the farm to equal the direct payment yield for all crops except oilseeds. For all oilseeds on the farm, both the direct and counter-cyclical payment yields shall be reduced to 75 percent of the county average yield as determined in accordance with §1412.302(b)(4). That yield shall then be reduced by the applicable direct payment yield factor in accordance with §1412.302(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to any or all of the following:

(i) Make a further yield reduction for part or all of the covered commodities and peanuts on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee shall:

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(1) Correct the counter-cyclical yield for the applicable crop to equal the yield that would have been calculated in accordance with §1412.303 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

### **Subpart D—Direct and Counter-Cyclical Program Contract Terms and Enrollment Provisions for Covered Commodities 2002 through 2007 and for Peanuts 2003 through 2007**

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

#### **§ 1412.401 Direct and counter-cyclical program contract.**

(a)(1) With respect to Fiscal Year 2002 payments, CCC will offer to enter into a contract with eligible producers of covered commodities and historical peanut producers on October 1, 2002 through the date announced by CCC. With respect to Fiscal Years 2003 through 2007, CCC shall offer to annually enter into a contract with an eligible producer on a farm having base acreage with respect to a covered commodity; and for a farm with peanut base acreage and yield assigned in accordance with subpart G of this part, at the beginning of each such fiscal year 2003 through 2007 through the date announced by CCC for each such year.

(2)(i) Eligible producers may execute and submit a contract to the county FSA office where the records for the farm are administratively maintained not later than June 1 of the fiscal year in which the direct and counter-cyclical payments are requested.

(ii) Because CCC will incur additional expenses which may not be possible to quantify with certainty, including the additional cost to ensure payments are issued timely to all producers, a late signup fee in the amount of \$100 per farm will be assessed by CCC for any farm enrolled after June 1 of the fiscal year in which the direct and counter-cyclical payments are requested unless the Deputy Administrator determines a waiver of the late signup fee is appropriate. Enrollment is not allowed after September 30 of the fiscal year in which the direct and counter-cyclical payments are requested.

(3) Eligible producers who elect to enter into a contract with CCC must enroll all base acres on the farm. Enrollment of fewer than all base acres on the farm is not allowed.

(b) Eligible producers may withdraw from a contract at any time on or before September 30 of the year of the contract provided all signatories to the contract, including CCC, agree to the withdraw.

(c) All contracts shall expire on September 30 of the fiscal year of the contract unless:

(1) Withdrawn in accordance with paragraph (b) of this section;

(2) Terminated in accordance with paragraphs (d) or (e) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(d) A transfer or change in the interest of a producer in base acres on the farm subject to a contract shall result in the termination of the contract with respect to such interest, and a refund of applicable direct and counter-cyclical payments issued for the farm. The contract termination shall be effective on the date of the transfer or change. Successors-in-interest on a farm subject to a contract may assume all obligations under the contract no later than September 30 of the contract year, and receive payment under the contract only after applicable direct and counter-cyclical payments previously issued to the predecessor for the farm have been refunded to CCC, or a debt for any amount not refunded to CCC has been established for the predecessor.